

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHNNY RHOADES,

Plaintiff,

v.

CITY OF LYNDEN, *et al.*,

Defendants.

CASE NO. C07-376-TSZ-MJB

REPORT AND RECOMMENDATION

Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, along with an application for leave to proceed *in forma pauperis* by a prisoner (“IFP application”). Although plaintiff is incarcerated in the Whatcom County Jail in Bellingham, Washington, his complaint does not challenge any aspect of his confinement. Rather, his complaint alleges that he was injured while performing work related to the installation of fiber optic cable in the city of Lynden, Washington. (Complaint at 3). He names as defendants the City of Lynden and the Verizon company. (*Id.*)

In order to bring an action under 42 U.S.C. § 1983, plaintiff must establish that defendants are “persons” acting “under color of state law,” and that defendants deprived plaintiffs of a right or privilege secured by the Constitution or the laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). In addition, section 1983 liability may not be premised upon negligence, but requires an intentional act. *See Daniels v. Williams*, 474 U.S. 327, 328 (1986).

From the face of his complaint, it is apparent that plaintiff has chosen the wrong vehicle to bring

1 his claim for his work-related injury. Accordingly, the court recommends that plaintiff's IFP application
2 be denied and this action be dismissed without prejudice. A proposed Order is attached.

3 DATED this 19th day of March, 2007.

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7 MONICA J. BENTON
8 United States Magistrate Judge
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